SINGAPORE REPORTS

Sing Eng (Pte) Ltd v PIC Property Ltd

COURT OF APPEAL (SINGAPORE) — CIVIL APPEAL NO 12 OF 1988
WEE CHONG JIN CJ, LAI KEW CHAI AND THEAN JJ
23 AUGUST 1990

Companies and Corporations — Rectification of share register — Whether equitable mortgagee transferring shares to nominee entitled to apply for rectification — Companies Act (Cap 50, 1985 Ed), s 194

Companies and Corporations — Articles of association — Pre-emptive rights of members in respect of share transfers — Transferor to give notice — Requirement for compliance with articles

Words and Phrases — 'Person aggrieved' — Companies Act (Cap 50, 1985 Ed), s 194

Words and Phrases — 'Transfer of shares'

The appellant ('the company') is a company incorporated in Singapore. Two shareholders of the company, MM and MK, executed legally identical guarantees and memoranda of charge charging all their shares in the company to XIB as security for their guarantee obligations. There was also a deposit of the relevant share certificates by MM and MK with XIB, and they had also executed and delivered to XIB blank transfers.

XIB intended to register all the shares in the name of its nominee, XIB Nominees. The blank transfers were completed by XIB and forwarded with the share certificates to the company for registration. Later, when MM and MK had defaulted on their obligations, XIB took action to enforce its security. It entered into a sale agreement with the respondents ('PIC') in respect of the shares charged by MM and MK. XIB then sent the relevant documents regarding the share sale to the company for registration. Both attempts at obtaining registration of the shares by XIB were unsuccessful. PIC then took out an application under s 194 of the Companies Act (Cap 50, 1985 Ed) for an order that the share register of the company be rectified by striking out the names of MM and and MK and substituting the name of XIB Nominees as nominee for the respondent; and further an order that the company deliver to the respondents the relevant share certificates. The High Court allowed the application, and against this decision the company appealed.

The first issue before the court was whether PIC is entitled to apply under s 194 for an order of rectification of the share register of the company. The second issue is whether XIB in relation to the transfers submitted for registration has complied with the pre-emption provisions of the articles of association of the company. Counsel for PIC argued, inter alia, that:

(1) A person who has bought shares is entitled to register them in the name of a nominee as nominee for him, and if that is denied to him, he is the person aggrieved within s 194(1) and is entitled to apply under that section for rectification of the share register of the company.

(2) A person entitled to transfer a share of the company includes one who is entitled in law to transfer such a share; XIB is an equitable mortgagee of the shares in question and is, under the terms of the guarantees and memoranda of charges, entitled to transfer those shares.

Held, allowing the appeal:

(1) PIC is not the person aggrieved within the meaning of s 194(1) of the Act. A person who has bought shares is not entitled, save as provided in the Act and the articles of association of the company, to have the shares registered in the name of his nominee. Where a person's shares are registered in the name of his nominee, his nominee vis-a-vis the company, holds the shares as the absolute owner in his own right and not in a representative capacity. In this case, the articles of association of the company expressly disallow registration of shares in the name of a person as nominee for a beneficial owner. On this ground alone, the company would be justified in rejecting the transfers for registration.

(2) Under art 33 of the company, where a share is desired to be transferred by a member or a person entitled to transfer to one who is not a member of the company, then the transferor must first give notice of the transfer to the company under art 34. The notice in this case was expressed to be given on behalf of XIB as a person 'entitled to transfer'. The words 'other persons entitled to transfer', in the context of the articles of association, do not admit of such a wide construction as contended. Apart from members, only certain categories of persons are recognized as being entitled to be registered as members or to transfer shares of the company.

(3) XIB was an equitable mortgagee of the shares; the legal titles to the shares remain vested in MM and MK. Although under the terms of the guarantees and the memoranda of charges, XIB had the power to sell the shares, the transfer of those shares must be from MM and MK. XIB is not therefore a person entitled to transfer any of the shares, and the steps taken by XIB, including the giving of notice under art 34, were not in compliance with the articles of association of the company.

(4) A sale or transfer of a notice not given in accordance with the pre-emption provisions of the articles of association of a company, is ineffectual and the subsequent transfer in breach of such provisions is ineffective.

Cases referred to

1 *Allied Properties Sdn Bhd* v *Semua Holdings Sdn Bhd & Ors* (unreported) (not follld)
2 *The New Lambton Land & Coal Co Ltd* v *The London Bank of Australia & Ors* (1904) 1 CLR 524 (follld)
3 *Safeguard Industrial Investments Ltd* v *National Westminster Bank* [1980] 3 All ER 849 (follld)
4 *Safeguard Industrial Investments Ltd* v *National Westminster Bank* [1982] 1 All ER 449 (CA) (follld)
5 *Hunter* v *Hunter & Ors* [1936] AC 222 (follld)

Legislation referred to

Companies Act (Cap 50, 1985 Ed) ss 194, 195
Companies Act 1965 [Mal] s 162
Companies Act [New South Wales] s 232

Appeal from: Originating Summons No 1221 of 1987 (High Court, Singapore)

Tan Jing Quee (*Lim Heng Chye* with him) for the appellant.
Philip N Pillai (*Susan Kong (Miss)* with him) for the respondents.

Cur Adv Vult

Thean J (delivering the judgment of the court): The appellant, Sing Eng (Pte) Ltd ('the company'), is a company incorporated in Singapore and has an authorized

capital of $2,500,000 divided into 2,500,000 shares of $1 each, of which 1,894,278 shares have been issued and are fully paid. Amongst its shareholders are Lie Mo Meng ('Mo Meng') and Lie Mo Kwang ('Mo Kwang'), each holding 514,930 shares in the company. They are also two of the directors of the company.

By two instruments, namely, a guarantee executed under seal and a memorandum of charge on stock and shares executed under hand, both dated 16 March 1986, Mo Meng charged all the 514,930 shares held by him to Xiamen International Bank ('XIB') as security for the due payment and discharge of his obligations under the guarantee. Similarly, by two instruments, namely, a guarantee executed under seal and a memorandum of charge of stock and shares executed under hand, both dated 21 March 1986, Mo Kwang also charged all the 514,930 shares held by him to XIB as security for the due payment and discharge of his obligations under the guarantee. The terms of the two guarantees are identical; so are the terms of the two memoranda of charges. Pursuant to the instruments executed by them, Mo Meng and Mo Kwang in April or May 1986 each deposited with XIB the certificates relating to the shares held by them, and further, in or about October 1986, they each executed and delivered to XIB blank transfers of the shares.

In February 1987, XIB intended to register all the shares in the name of its nominee, XIB (Nominees) Ltd ('XIB Nominees'). Accordingly, the blank transfers were completed by XIB and were each expressed to be made pursuant to the memorandum of charge and to transfer 514,930 shares to XIB Nominees as nominee for XIB. Sometime on or about 14 April 1987, a circular resolution of the board of directors of the company was signed by three directors approving the transfers of the shares to XIB Nominees and authorizing the issue of new share certificates to XIB. Subsequently, on 9 May 1987, Shook Lin & Bok, as solicitors for XIB, forwarded to the company the two transfers and the share certificates for registration and requested for the issue of new share certificates to XIB Nominees. No action, however, appeared to have been taken by the company in relation to these transfers. Nor did it give any response to Shook Lin & Bok. XIB and Shook Lin & Bok also did not pursue further the matter of registration of the transfers of the shares to XIB Nominees.

About three weeks later, on 26 May 1987, XIB by letters addressed to Mo Meng and Mo Kwang respectively demanded payment by them of the amounts due under the guarantees. Presumably, no payment was made by them or either of them. In consequence, XIB proceeded to enforce the charges on the shares. As a first step, Shook Lin & Bok on instructions from XIB served on the company a notice dated 22 June 1987 under art 34 of the articles of association of the company. The material part of this notice is as follows:

> Our clients as persons entitled to transfer (hereinafter referred to as the proposing transferor) and acting with the full authority of the registered member in respect of the following identified shares, hereby give notice to Sing Eng (Private) Limited that our clients desire to transfer the same.
>
> The fair value of such shares as computed by our valuers is HK$10m (S$2,745,000).
>
> Our clients hereby constitute the company as their agent for the sale of the share to any member of the company at the price so fixed or at the option of the purchaser, at the fair value to be fixed by the auditors of the company.

There was, again, no response by the company to this notice. XIB then pursuant to the power of sale contained in the guarantees and the memoranda of charges entered into a sale agreement on 31 July 1987 with PIC Property Ltd, the abovenamed respondents ('PIC'), whereby XIB sold to PIC all the shares charged to them for a total consideration of HK$10m. After the sale, Shook Lin & Bok on behalf of XIB wrote to the company on 20 August 1987 and forwarded two transfers, each of 514,930 shares, for registration; they also enclosed together with the transfers certified true copies of the memoranda of charges as evidence of the right of XIB to transfer the shares. The material part of the letter enclosing the documents is as follows:

> As you have failed to give us notice of a purchasing member pursuant to art 35, within the 14 days of our notice, we now pursuant to art 36 notify you that our clients have sold and transferred the shares for HK$10m.
>
> We now forward herewith two share transfers duly stamped, each for 514,930 shares.
>
> The share certificates, in respect of such transfers, are in your possession having been forwarded to you on 9 May 1987. We also forward herewith certified true copies of the memorandum of charge as evidence of the right of Xiamen International Bank to transfer the shares.
>
> Kindly register the transfer and let us have the new share certificates in favour of XIB Nominees Ltd.

To this letter the company through its solicitors, Jing Quee, Chin Joo & Teck Hui, on 25 August 1987, replied stating that the shares comprised in the two transfers were registered in the names of Mo Meng and Mo Kwang respectively, and that neither XIB nor XIB Nominees was ever registered as holder of the shares or any part thereof and that in those circumstances the company was unable to register the two share transfers and enter the name of PIC or its nominee in its register.

On 12 November 1987, PIC took out an application under s 194 of the Companies Act (Cap 50, 1985 Ed) ('the Act') for an order that the share register of the company be rectified by striking out the names of Mo Meng and Mo Kwang respectively and substituting

therefor the name of XIB Nominees as holder as nominee of PIC, the owner of all the shares, and further an order that the company deliver to PIC certificates for 1,029,860 shares of $1 each in the capital of the company. The application was resisted by the company. It was heard by the High Court, and an order was made in terms thereof. Against the decision of the High Court, this appeal is now brought.

There are essentially two issues before us: first, whether PIC is entitled to apply under s 194 of the Act for an order of rectification of the share register of the company and the consequential order, and, secondly, whether XIB in relation to the transfers submitted to the company for registration has complied with the pre-emption provisions of the articles of association of the company. The first issue turns on the construction of s 194(1) and the second issue on the construction of art 33 of the articles of association of the company.

We now deal with the first issue, and it is convenient at this stage to set out, insofar as relevant, the provisions of s 194, which are as follows:

> (1) If —
>
> (a) the name of any person is without sufficient cause entered in or omitted from the register; or
> (b) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member,
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> the person aggrieved or any member or the company may apply to the Court for rectification of the register, and the Court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application.
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> (2) On any application under subsection (1), the Court may decide —
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> (a) any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand; and
> (b) generally, any question necessary or expedient to be decided for the rectification of the register.
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> ...

The case which PIC seeks to make out is one under para (a) of s 194(1). In this connection, it is necessary to examine the contents of the two transfers submitted to the company for registration. Each was expressed to be a transfer by XIB of 514,930 shares of the company to XIB Nominees as nominee of PIC, the owner of the shares, and for consideration paid by PIC; each was executed by XIB as the transferor and XIB Nominees as the transferee. Hence, it is XIB Nominees whose name the company has refused to enter in the share register. XIB Nominees, therefore, falls squarely within the words, 'the person aggrieved', in s 194(1) of the Act. However, XIB Nominees is not the party who brought the application; it is not a party to these proceedings at all. The application was brought by PIC and the question is whether PIC is also the person aggrieved within the meaning of s 194(1) of the Act.

Counsel for PIC submits that s 194 provides a summary procedure for a person aggrieved or a member or the company to apply to court to rectify the share register, and that such a person aggrieved could be one who has sold his shares in the company or one who has bought shares in the company. A person who has bought shares is entitled to have the shares registered either in his own name or in the name of a nominee as nominee for him, and if he chooses the latter and that is denied to him, then he is the person aggrieved within the meaning of s 194(1) and is entitled to apply under that section for rectification of the share register of the company. The person aggrieved in s 194(1), in so far as para (a) thereof is concerned (as para (b) is not relevant in this appeal), does not mean only the person whose name has been entered in or omitted from the share register; if this were so, the appropriate words used in s 194(1) would be 'such person' and not 'the person aggrieved', as in such a case the word 'aggrieved' would be superfluous. The meaning of the words, 'the person aggrieved', therefore, extends to include any other person aggrieved by the decision of the company as regards an entry in or omission from its share register. We are unable to accept this submission. First, a person who has bought shares in a company is not entitled, save as provided in the Act and the articles of association of the company, to have the shares registered in the name of his nominee as nominee for him. Where a person's shares are registered in the name of his nominee, his nominee vis-a-vis the company holds the shares as the absolute owner in his own right and not in a representative capacity, such as a nominee or trustee. The Act by s 195 provides for registration of shares of the estate of a deceased person in the name of any trustee, executor or administrator of such estate, and subject to this, the same section by sub-s (4) thereof expressly provides that no notice of any trust expressed, implied or constructive shall be entered on the share register of a company. It is helpful to set out below in full the provisions of s 195:

> (1) Any trustee, executor or administrator of the estate of any deceased person who was registered in a register or branch register kept in Singapore as the holder of a share in any corporation may become registered as the holder of that share as trustee, executor or administrator of that estate and shall in respect of that share be subject to the same liabilities and no more as he would have been subject to if the share had remained registered in the name of the deceased person.
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> (2) Any trustee, executor or administrator of the estate of any deceased person who was beneficially entitled to a share in any corporation being a share registered in a register or branch register kept in Singapore may with the consent of the corporation and of the registered holder of that share become

registered as the holder of the share as trustee, executor or administrator of that estate and shall in respect of the share be subject to the same liabilities and no more as he would have been subject to if the share had been registered in the name of the deceased person.

(3) Shares in a corporation registered in a register or branch register kept in Singapore and held by a trustee in respect of a particular trust shall at the request of the trustee be marked in the register or branch register in such a way as to identify them as being held in respect of the trust.

(4) Subject to this section, no notice of any trust expressed, implied or constructive shall be entered on a register or branch register or be receivable by the Registrar and no liabilities shall be affected by anything done in pursuance of subsection (1), (2) or (3) or pursuant to the law of any other place which corresponds to this section and the corporation concerned shall not be affected with notice of any trust by anything so done.

In this case, the articles of association of the company expressly disallow registration of shares in the name of a person as nominee for a beneficial owner. Article 9 of the articles of association of the company provides:

No person shall be recognized by the Company as holding any share upon any trust and the Company shall not be bound by or recognize any equitable contingent future or partial interest in any share or unit of a share or (except only as by these Articles or by law otherwise provided) any other right in respect of any share except an absolute right to the entirety thereof in the registered holder.

Therefore, PIC was clearly in error in seeking to have the name of XIB Nominees as its nominee entered in the register of the company in respect of the shares comprised in the two transfers. It seems to us that on this ground alone, the company would be justified in rejecting the transfers for registration.

Secondly, the provision in s 194(1) does not admit of such a wide construction as contended on behalf of PIC. The words, 'the person aggrieved', are preceded by the words in paras (a) and (b); the words in para (a) refer to a person whose name is without sufficient cause entered in or omitted from the register and those in para (b) refer to a person who has ceased to be a member but default is made or unnecessary delay takes place in entering in the register the fact of his cessation as a member. Therefore, the words, 'the person aggrieved', must necessarily mean and refer to a person falling within para (a) or (b) of s 194(1). Such a person is 'the person aggrieved' and we do not see how the word 'aggrieved' in the context of this section can be considered to be superfluous.

Counsel for PIC next relies on the decision of the High Court in Malaysia in *Allied Properties Sdn Bhd* v *Semua Holdings Sdn Bhd & Ors*.[1] In that case, the plaintiff, who was the ultimate beneficial owner of the shares in question of a company, took out an application under s 162 of the Malaysian Companies Act 1965 (which is in pari materia with s 194 of our Companies Act) complaining that the company, one of the defendants, had omitted without sufficient cause to register the shares in the name of the plaintiff's nominees. The High Court held that the plaintiff was the aggrieved party and was entitled to bring the application. The relevant part of the transcript of the judgment relied on by counsel for PIC reads as follows:

From the undisputed facts, it is very clear that D & C Bank Nominees Sdn Bhd are the agents of the applicant, who is the ultimate beneficial owner of the shares to be registered. As the ultimate beneficial owner, there can be no doubt whatsoever that the applicant is the person aggrieved by the refusal of the first respondent to register the shares in either its name or of its nominees. The fact that the nominees are not made party to this action is quite immaterial to the real issue at hand which is whether the respondents have a right to refuse registration, and if so, whether that right has been properly and legally exercised.

We respectfully agree with the propositions of law as stated in this passage of the judgment but not in the context of a statutory provision such as that found in s 194(1) of our Act. A person in the position of the plaintiff in that case is undoubtedly a person aggrieved — aggrieved by the refusal of the company to register the shares in the name of his nominee — but he is not, in our opinion, on the true construction of s 194(1) 'the person aggrieved' within the meaning of that section. With respect, we are unable to follow that decision.

Reverting to the facts of the instant case, aggrieved no doubt PIC was by the refusal of the company to enter in its register the name of XIB Nominees as nominee of PIC; in that sense PIC is the person aggrieved. But PIC is not, in our opinion, the person aggrieved within the meaning of s 194(1) of the Act.

We are fortified in our view by the Australian case, *The New Lambton Land & Coal Co Ltd* v *The London Bank of Australia Ltd & Ors*.[2] In that case, The London Bank of Australia Ltd made an application under s 232 of the Companies Act of New South Wales (which section is in pari materia with s 194 of our Act) for rectification of the share register of the company, The New Lambton & Coal Co Ltd, by removing the name of one Alexander Brown as holder of 7,000 shares and by entering in the register the names of the bank's nominees, JL Ballantyne and EW Bancroft as holders thereof. Initially, the application was taken out only by the bank, but at the hearing of the application, Walker J, on application by the bank, ordered that an amendment be made to the application by joining both Ballantyne and Bancroft with the bank as applicants. That amendment having been made, the learned judge then granted the application. Clearly, these two persons, though nominees for the bank, ought to be joined as parties to the application as they were the only persons aggrieved within the meaning of s 232 of the NSW Act.

Against the decision of the learned judge the company appealed. In dismissing the appeal, Griffth CJ dealt very briefly with this point at p 539, as follows:

> First of all it is urged that the motion by the bank could not be heard by the court, because it did not come within the meaning of s 232, which provides that application may be made by 'the person or member aggrieved'. In this case, it is said, the bank is not a member, and the only persons aggrieved were Bancroft and Ballantyne. Technically, perhaps, the transferees are the only persons aggrieved. But as the case is now presented to us, it is not necessary to decide this point, though it might have been if there had been no amendment. In favour of the contention it is urged that this is a section which gives a summary remedy and procedure, and can only be taken advantage of by the persons for whose relief it is expressly intended. But the court of equity could give the same relief in a suit, and if the application had been made to the Supreme Court in its equitable jurisdiction that court would have entertained it, and the principles of equity would have been applied. One of those principles is that the person who is in substance interested in a matter may move the court in his own name, and may join the trustee as a party in the suit, either as a plaintiff or a defendant. But the power of the court to entertain the suit and add necessary parties is never restricted merely on account of a original absence of formal parties.

In our judgment, PIC, not being the person aggrieved within the meaning of s 194(1), is not entitled to take out and maintain this application under that section. Counsel for PIC at the conclusion of his submission on this point applied for leave to amend the proceedings by joining XIB Nominees as one of the plaintiffs in the proceedings before the High Court and as one of the respondents before us. If this procedural defect is the only difficulty PIC has to overcome, we would be disposed to grant leave and order the appropriate amendments to be made. However, there is yet a more formidable difficulty in the way — indeed a very fundamental point — and this is found in the second issue, to which we now turn.

The articles of association of the company which contain the pre-emption provisions are arts 33 to 40, and for the purpose of this appeal, the relevant articles are 33 and 34, which are as follows:

> 33 A share may be transferred by a member or other person entitled to transfer (hereinafter called 'the transferor') to any member selected by the transferor; but no share shall be transferred to a person who is not a member so long as any member (or any person selected by the directors as one whom it is desirable in the interests of the company to admit to membership) is willing to purchase the same at the fair value.
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> 34 Except where the transfer is made pursuant to arts 33, 36 and 43 hereof, a person proposing to transfer any share (hereinafter called the proposing transferor) shall give notice in writing (hereinafter called the transfer notice) to the company that he desires to transfer the same. Such notice shall specify the sum he fixes as the fair value, and shall constitute the company his agent for the sale of the share to any member of the company at the price so fixed or at the option of the purchaser, at the fair value to be fixed by the auditors of the company. The transfer notice shall not be revocable except with the sanction of the directors.

Clearly under the provisions of these articles, where a share is desired to be transferred by a member or a person entitled to transfer to one who is not a member of the company or who is not one selected by the directors of the company under art 33, the member or the person entitled to transfer must, as a first step, give notice of transfer to the company pursuant to art 34. Now, in the instant case, XIB through its solicitors, Shook Lin & Bok, on 22 June 1987, gave notice of transfer to the company under art 34. That notice was expressed to be given on behalf of XIB as a person 'entitled to transfer'; it was not given on behalf of XIB as the agent for Mo Meng and Mo Kwang who are members of the company, and XIB itself is not a member of the company. Therefore, the question that immediately arises is whether XIB is a person entitled to transfer the shares (referred to in the notice) within the meaning of art 33. The shares referred to in the notice were not described or identified, but it is accepted that they mean the shares held by Mo Meng and Mo Kwang. It is contended by counsel for PIC that a person entitled to transfer a share of the company includes one who is entitled in law to transfer such a share. XIB, he submits, is an equitable mortgagee of the shares in question and is, under the terms of the guarantees and memoranda of charges, entitled to transfer those shares. In particular, he relies on cl 7 of the guarantee which confers on XIB the powers to sell, transfer or otherwise dispose of the shares. Clause 7, so far as relevant, reads:

> To secure the guarantor's obligations hereunder, the guarantor hereby agrees to deposit with or assign to or cause to be deposited with or assigned to XIB from time to time and at any time upon demand and by way of legal or equitable mortgage or otherwise the securities set out in the Second Schedule hereto. ... XIB may at its option take any action at any time in relation to the above securities (including but not limited to depositing or pledging the same as security for loans or advances to XIB or for other third parties or otherwise parting with the possession thereof for any purpose whatsoever) or to transfer the same to the name of XIB or that of any nominee of XIB. For the purpose of enabling XIB to exercise its rights under this clause, the guarantor hereby appoints XIB to be the guarantor's lawful attorney at any time to do all the acts and deeds in the name of the guarantor or in the name of XIB to sell, realize, transfer or otherwise dispose of the above securities ...

We are again unable to agree with counsel for PIC. In the first place, the words 'other person entitled to transfer' in the context of the articles of association do not admit of such a wide construction as contended. The articles of association are those of a private company and contain restrictions on transfer of shares of the company. Apart from members, only certain categories of persons are recognized as being entitled to be registered as members or to transfer shares of the company, and these are provided in arts 41 and 41A which are as follows:

41 The executors or administrators of a deceased member (not being one of several joint holders) shall be the only persons recognized by the company as having any *title to the shares* registered in the name of such member; in the case of the death of anyone or more of the joint holders of any registered shares the survivors shall be the only persons recognized by the company as having any title to or interest in such shares but nothing therein contained shall release the estate of a deceased joint holder from any liability in respect of any share jointly held by him.

41A Any person becoming *entitled to shares* in consequence of the death bankruptcy insolvency or lunacy of any member (hereinafter referred to as a person entitled by transmission) shall on producing to the company such evidence as may be reasonably required by the directors to prove his title *be entitled to be registered* as a member in respect of the shares or instead of being registered himself *to make such transfer* as the deceased bankrupt or insolvent person could have made. This article is hereinafter referred to as the transmission article.

(Emphasis added.)

In addition, the company by arts 42 and 42A is empowered to transfer shares of a member in certain circumstances, and the provisions of these articles are as follows:

42 Where by the exercise of reasonable diligence the company is unable to discover the whereabouts of a shareholder for a period of not less than ten years the company may cause an advertisement to be published in a newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the company after the expiration of one month from the date of the advertisement intends to transfer the shares to the minister charged with responsibility for finance.

42A If after the expiration of one month from the date of the advertisement the whereabouts of the shareholder remains unknown, *the company may transfer the shares* held by the shareholder in the company to the minister charged with responsibility for finance and for the purpose may execute for and on behalf of the owner a transfer of those shares to the minister charged with responsibility for finance.

(Emphasis added.)

Save as provided in these articles, there is no provision in the articles of association which entitles a person, who is not a member, to transfer any share of the company. In our opinion, in the context of the articles of association, the words, 'person entitled to transfer', mean a person who is not a member of the company but who is entitled under the articles to transfer shares of the company.

The other equally insurmountable obstacle in the way of the arguments advanced on behalf of PIC is this. The word 'transfer' in art 33, in our opinion, means a transfer of a share or shares and a transfer of share or shares means a transfer of the legal title to the share or shares. Support for this view can be found in the decision of Vinelott J in *Safeguard Industrial Investments Ltd* v *National Westminster Bank*[3] in which one of the questions raised involved the construction of the word 'transfer' in relation to shares in the pre-emption provisions of the articles of association of the company. At p 858, the learned judge said:

> Although it may seem at first sight unduly restrictive to read the word 'transfer' as referring only to a transfer of the legal interest in a share leaving, as Lord Sorn put it, the 'obvious manoeuvre' of a sale of the beneficial interest unprohibited, art 7 seems to me wholly inapt to 'catch' transfers of beneficial interests. A 'transfer of a share' in the ordinary sense of that expression is a transfer of the legal title to the share with the rights and liabilities attaching to it; on registration of the transfer the transferor ceases to be, and the transferee becomes, a member of the company in right of that share. A member who desires to transfer a share will carry his intention into effect by executing a transfer and lodging it for registration. At that stage the restrictions in the pre-emption provisions come into operation. To treat the references to the transfer of a share as comprehending a transfer or disposition of a beneficial interest in a share is to give the expression 'transfer of a share' a meaning wider than it would ordinarily bear.

His decision was affirmed on appeal, and his views on the construction of a transfer of a share was approved by the Court of Appeal: see the judgment of Oliver LJ[4] at p 455.

It is common ground that XIB is an equitable mortgagee of the shares in question, and as such it does not have any legal title to the shares; the legal titles to the shares remain vested in Mo Meng and Mo Kwang respectively. This being the position, clearly XIB is not a person entitled to transfer the shares. It is contended on behalf of PIC that under the terms of the guarantees and memoranda of charges XIB has powers to sell and transfer the shares; but even on this argument, the legal titles to the shares which XIB is empowered to transfer are those of Mo Meng and Mo Kwang, and the transfers of such shares must be from and by them as transferors transferring their shares respectively, though XIB by reason of such powers may execute such transfers whether in its name or as attorney for them and in their names. This, however, is not the case here. The two transfers submitted to the company for registration are not transfers by Mo Meng and Mo Kwang respectively; nor are they transfers of the legal titles to the shares vested in Mo Meng and Mo Kwang respectively. They are transfers by XIB, each of 514,930 shares of the company to XIB Nominees as nominee for PIC; but at no time has XIB any legal title to the shares.

In our judgment, on the true construction of art 33, XIB is not a person entitled to transfer any of the shares which it purported by the two transfers to transfer and the steps taken by XIB in relation to the transfers of the shares, including the purported giving of the notice under art 34, were not in compliance with the terms of the articles of association of the company. Consequently, the company was entitled to decline to register the transfers of shares submitted by XIB.

The case of *Hunter v Hunter & Ors*[5] cited and relied upon by counsel for the company is of some assistance. In that case, one SA Hunter was a shareholder of Thomas Hunter Ltd and was a customer of the defendant bank. He executed in favour of the bank a continuing guarantee and also a memorandum of charge whereby he charged to the bank all his shares in Thomas Hunter Ltd, the certificates of which had been lodged with and were held by the bank as security for payment of all moneys due or becoming due to the bank. The memorandum of charge contained powers enabling the bank to sell or dispose of any of the shares in the event of a default on the part of SA Hunter. By the articles of association of the company, a member could not transfer his shares until he had given notice to the secretary offering to sell his shares at the price to be fixed by the auditor and until the secretary had offered them to other members. Subsequently, the bank pressed for payment and further shares as security were offered to and taken by the bank. The nominees of the bank were placed on the register of the company as the holders of all the shares charged to the bank. Subsequently, the bank in exercise of their power of sale proceeded to take steps to sell the shares. Accordingly, the nominees acted in accordance with the articles of association and gave the required notice and subsequently sold the shares to one Harry Hunter. A question arose as to whether the sale of the shares by the bank was in accordance with the articles of association of the company. It was held, inter alia, that the articles did not permit a shareholder to make a transfer of shares by way of security and did not permit the nominees of the bank to be registered as shareholder, and that the nominees were not members entitled to give a sale or transfer notice in accordance with the articles of association. In the House of Lords, Viscount Hailsham LC in his speech said at p 248:

> I am satisfied that the construction placed on art 17 by both courts is right, and that the steps taken to put the nominees of the bank on the register were not in accordance with the terms of the article. This construction does not prevent a mortgage of the shares or their sale by the mortgagees in default of payment of the mortgage debt. But the sale must be effected in accordance with the terms of the article. The bank could have taken from the plaintiff letters addressed to the auditor and to the secretary respectively in blank, or they could have taken a power of attorney from the plaintiff to write such letters in his name and on his behalf.

The articles of association in *Hunter* v *Hunter*[5] were admittedly different from those of the company here, but the case is a clear authority for the view that a sale or transfer notice not given in accordance with the pre-emption provisions of the articles of association of a company is ineffectual and the subsequent transfer in breach of such provisions inoperative.

In the result, this appeal is allowed. We set aside the order made by the High Court and dismiss the application made by PIC. The costs here and below are to be borne and paid by PIC, and the sum deposited in court as security for costs is to be refunded to the company.

Appeal dismissed.

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Reported by *Terence Tan Bian Chye*

Saniah bte Ali & Ors v Abdullah bin Ali

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 923 OF 1989
THEAN J
8 JUNE 1990

Provident Fund — Nomination by CPF member of person entitled to CPF moneys upon member's death — Whether nomination creates trust of CPF moneys in favour of nominee — Whether CPF moneys form part of estate of deceased member — Central Provident Fund Act (Cap 36, 1985 Ed), ss 23 & 24 — Administration of Muslim Law Act (Cap 3, 1985 Ed), s 112(1)

Islamic Law — CPF money of Muslim — Muslim dying intestate — Whether CPF nominee entitled to retain CPF money against person entitled to estate under Muslim law — Central Provident Fund Act (Cap 36, 1985 Ed), ss 23 & 24 — Administration of Muslim Law Act (Cap 3, 1985 Ed), s 112(1)

Succession — CPF moneys — CPF member Muslim domiciled in Singapore — Whether CPF moneys form part of estate of member dying intestate — Whether Muslim law of succession applicable

The deceased had, during his lifetime, nominated only the first plaintiff, who was the deceased's stepsister, to receive in her own right the entire amount payable on his death out of the Central Provident Fund ('the Fund'). On the deceased dying intestate, the CPF paid out the deceased's moneys to the first plaintiff. Under Muslim law, the defendant, who was the deceased's brother, was entitled to the whole estate of the deceased. The issue that arose was whether the first plaintiff was entitled to retain the entire amount of the deceased's CPF moneys. It was argued that by virtue of s 112(1) of the Administration of Muslim Law Act ('AML Act'), the estate of any Muslim dying intestate was to be distributed in accordance with Muslim law.

Held, finding in favour of the first plaintiff:

(1) The court was unable to accept that by making a nomination under s 24 of the Central Provident Fund Act ('CPF Act'), a member of the Fund created a trust of his money in the Fund. The section does not expressly or impliedly enable a member to create a trust of his moneys in the Fund. When a trust is created, it is not revocable by the settlor, except with the consent of the beneficiary therefor. A nomination made by a member under the CPF Act can be revoked or varied at any time during the lifetime of the member. The trust created by virtue of s 23(3) of the CPF Act is not created at the time the nomination